

## § 127.009

## 33 CFR Ch. I (7–1–14 Edition)

COTP's Letter of Recommendation, which indicates review and validation of the Follow-on WSA has been completed.

(2) In the event that revisions to the WSA are needed, report to the COTP the details of the necessary revisions, along with a timeline for completion.

(3) Update the WSA if there are any changes in conditions, such as changes to the port environment, the LNG or LHG facility, or the tanker route, that would affect the suitability of the waterway for LNG or LHG traffic.

(4) Submit a final report to the COTP at least 30 days, but not more than 60 days, prior to the start of operations.

[USCG–2007–27022, 75 FR 29426, May 26, 2010]

### § 127.009 Letter of recommendation.

(a) After the COTP receives the Letter of Intent under §127.007(a) or (b), the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation, and, at the same time, sends a copy to the owner or operator, based on the—

(1) Information submitted under §127.007;

(2) Density and character of marine traffic in the waterway;

(3) Locks, bridges, or other man-made obstructions in the waterway;

(4) Following factors adjacent to the facility such as—

(i) Depths of the water;

(ii) Tidal range;

(iii) Protection from high seas;

(iv) Natural hazards, including reefs, rocks, and sandbars;

(v) Underwater pipelines and cables;

(vi) Distance of berthed vessel from the channel and the width of the channel; and

(5) Any other issues affecting the safety and security of the waterway and considered relevant by the Captain of the Port.

(b) An LOR issued under this section is a recommendation from the COTP to the agency having jurisdiction as described in paragraph (a), and does not constitute agency action for the purposes of §127.015 or the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(c) The owner or operator, or a State, local, or Indian tribal government in the vicinity of the facility, may request reconsideration as set forth in §127.010.

(d) Persons other than the owner or operator, or State, local, or Indian tribal government in the vicinity of the facility, may comment on the LOR by submitting comments and relevant information to the agency having jurisdiction, as described in paragraph (a), for that agency's consideration in its permitting process.

(e) Paragraphs (c) and (d) of this section apply to LORs issued after December 28, 2012. For LORs issued prior to that date, persons requesting reconsideration must follow the process set forth in §127.015.

[USCG–2011–0227, 77 FR 70890, Nov. 28, 2012]

### § 127.010 Reconsideration of the Letter of Recommendation.

(a) A person requesting reconsideration pursuant to §127.009(c) must submit a written request to the Captain of the Port (COTP) who issued the Letter of Recommendation (LOR), and send a copy of the request to the agency to which the LOR was issued. The request must explain why the COTP should reconsider his or her recommendation.

(b) In response to a request described in paragraph (a) of this section, the COTP will do one of the following—

(1) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request and the owner or operator; or

(2) Revise the LOR, and send the revised LOR to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(c) A person whose request for reconsideration results in a confirmation as described in paragraph (b)(1) of this section, and who is not satisfied with that outcome, may request, in writing, the opinion of the District Commander of the district in which the LOR was issued.

(1) The request must explain why the person believes the District Commander should instruct the COTP to reconsider his or her recommendation.

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(2) A person making a request under paragraph (c) of this section must send a copy of the request to the agency to which the LOR was issued.

(3) In response to the request described in this paragraph (c), the District Commander will do one of the following—

(i) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request, the owner or operator, and the COTP; or

(ii) Instruct the COTP to reconsider the LOR, and send written notification of that instruction to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(d) The District Commander's written confirmation described in paragraph (c)(3)(i) of this section ends the reconsideration process with respect to that specific request for reconsideration. If the COTP issues an LOR pursuant to paragraph (b)(2) or (c)(3)(ii) of this section, persons described in § 127.009(c) may request reconsideration of that revised LOR using the process beginning in paragraph (a) of this section.

[USCG-2011-0227, 77 FR 70890, Nov. 28, 2012]

### § 127.011 Inspections of waterfront facilities.

The operator shall ensure that the COTP or his representative is allowed to make reasonable examinations and inspections to determine whether the facility meets this part.

[CGD 78-038, 53 FR 3376, Feb. 7, 1988, as amended by CGD 88-049, 60 FR 39795, Aug. 3, 1995]

### § 127.013 Suspension of transfer operations.

(a) The COTP may issue an order to the operator to suspend LHG or LNG transfer operations if the COTP finds any condition requiring immediate action to—

(1) Prevent damage to, or the destruction of, any bridge or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to such waters; and

(2) Protect the navigable waters and the resources therein from harm re-

sulting from vessel or structure damage, destruction, or loss.

(b) Each order to suspend transfer operations issued under paragraph (a) of this section—

(1) Is effective immediately;

(2) Contains a statement of each condition requiring immediate action; and

(3) Is withdrawn by the COTP whenever each condition is corrected or no longer exists.

[CGD 78-038, 53 FR 3376, Feb. 7, 1988, as amended by CGD 88-049, 60 FR 39795, Aug. 3, 1995]

### § 127.015 Appeals.

(a) Any person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.

(b) Except as provided under paragraph (e) of this section, any person not satisfied with a ruling made under the procedure contained in paragraph (a) of this section may—

(1) Appeal that ruling in writing to the District Commander of the district in which the action was taken; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(c) The District Commander issues a ruling after reviewing the appeal submitted under paragraph (b) of this section. Except as provided under paragraph (e) of this section, any person not satisfied with this ruling may—

(1) Appeal that ruling in writing to the Assistant Commandant for Marine Safety, Security and Environmental Protection, U.S. Coast Guard, (CG-5), 2100 2nd St., SW., Stop 7355, Washington, DC 20593-7355; and

(2) Supply supporting documentation and evidence that the appellant wishes to have considered.

(d) The Assistant Commandant for Marine Safety, Security and Environmental Protection issues a ruling after reviewing the appeal submitted under paragraph (c) of this section, which is final agency action.

(e) If the delay in presenting a written appeal has an adverse impact on the operations of the appellant, the appeal under paragraph (b) or (c) of this section—

(1) May be presented orally; and